STATE OF MICHIGAN

COURT OF APPEALS

DANIEL DIEBOLT,

Plaintiff-Appellant,

v

CYNTHIA CASTEEL,

Defendant-Appellee.

UNPUBLISHED
February 8, 2005

No. 255337
Washtenaw Circuit Court
LC No. 96-006769-DZ

Before: Markey, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order changing custody of the parties' minor children from plaintiff to defendant. We affirm.

In 1993, after prolonged and acrimonious custody proceedings in Texas, plaintiff was awarded custody of the parties' children. The parties and children moved to Michigan in the mid-1990s, and plaintiff continued to maintain custody of the children under the terms of the Texas order. In 1996, plaintiff attempted to "enroll" a Texas judgment in Washtenaw Circuit Court, and in 1998, plaintiff applied to the Michigan court for an increase in support. Defendant continued to participate in regular visitation as specified in the Texas order. In March 2002, based on defendant's petition, the Washtenaw Circuit Court assumed jurisdiction over the custody case.

In November 2002, defendant moved for a change of custody based on a change of circumstances. She alleged that plaintiff had become less able to parent the adolescent children, and they were having increasing conflicts with him. Defendant asserted that plaintiff was extremely rigid and controlling and was not considering the children's needs. The trial court referred the matter to the Friend of the Court, which issued a recommendation that temporary custody be immediately awarded to defendant because of plaintiff's emotional and erratic conduct, and that a psychological evaluation was warranted. In an order dated March 31, 2003, the trial court followed the Friend of the Court recommendation and awarded defendant temporary custody of the children without holding a hearing. After plaintiff filed several motions with respect to that temporary order, the trial court revisited the issue at a summary hearing and then entered a second order that again awarded defendant temporary custody of the children.

Following a three-day evidentiary hearing in November and December 2003, the trial court entered a final order changing custody of the children from plaintiff to defendant.

Plaintiff, acting in propria persona, has filed an extensive brief with this Court raising thirty-eight issues. We conclude that plaintiff has abandoned most of these issues. With respect to most of the issues raised, plaintiff does nothing more than refer to a standard of review. With respect to others, he fails to properly explain and rationalize his asserted positions or support them with appropriate authority. An appellant may not merely announce positions and leave it to this Court to discover and rationalize the basis for his claims, nor may he give his positions cursory treatment with little or no citation of authority. *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). Where an appellant fails to properly address the merits of his assertions of error, the issues are abandoned. *Id.* at 339-340. We therefore decline to consider the majority of plaintiff's issues. We shall address only those issues that are properly presented and argued to this Court.

Plaintiff argues that the trial court lacked jurisdiction to modify the Texas custody order. The statute conferring jurisdiction, MCL 600.653, which was applicable at the time the trial court asserted jurisdiction in this case,[1] provided:

> (1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree or judgment if any of the following exist:
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> (a) This state is the home state of the child at the time of commencement of the proceeding or had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state.
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> (b) It is in the best interest of the child that a court of this state assume jurisdiction because the child and his parents, or the child and at least 1 contestant, have a significant connection with this state and there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships.
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> (c) The child is physically present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent.

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[1] The Uniform Child Custody Jurisdiction Act (UCCJA), MCL 600.651 *et seq.*, was repealed effective April 1, 2002. MCL 722.1406. It was replaced by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101, *et seq.* Because the UCCJA was in effect when the trial court assumed jurisdiction, its provisions govern the jurisdiction issue on appeal.

> (d) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with subdivisions (a), (b), or (c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child and it is in the best interest of the child that this court assume jurisdiction.

It is undisputed that Michigan was the home state of the children for several years before commencement of these proceedings. MCL 600.653(1)(a). The children also had grandparents residing in Michigan, and attended school and participated in extracurricular activities here. Therefore, it was in the children's best interests for Michigan to take jurisdiction because the children and both parties had significant ties to Michigan. MCL 600.653(1)(b). Both parties also lived and worked in Michigan and cared for the children in Michigan. MCL 600.653(1)(c). Texas no longer had jurisdiction under any of the prerequisites of MCL 600.653(1)(a), (b), and (c). See MCL 600.653(1)(d). Under the circumstances, the trial court had jurisdiction to alter the custody arrangement, and its decision to exercise that jurisdiction in this case was not an abuse of discretion. *Young v Punturo*, 252 Mich App 47, 54; 651 NW2d 122 (2002).

We disagree with plaintiff that alleged procedural defects deprived the court of jurisdiction. First, plaintiff waived his service of process objection, which was based on defendant's failure to serve a summons after she filed her petition in 2002 to "enroll"[2] the Texas judgment. This Court has held that a party who enters a general appearance and contests a cause of action on the merits submits to the court's jurisdiction and waives service of process objections. *In re Gordon Estate*, 222 Mich App 148, 157-158; 564 NW2d 497 (1997). Plaintiff appeared in the litigation, filed substantive motions, and attended and participated in hearings. He cannot now claim that the trial court lacked jurisdiction over him because he was not served with a summons. *Id*. Furthermore, careful review of the record demonstrates that plaintiff was the one who first submitted this case to Washtenaw Circuit Court when he attempted to "enroll" the Texas judgment in 1996 and later appealed to the court to increase child support in 1998. Therefore, because plaintiff actually requested that the court take jurisdiction, his argument that he never submitted to the circuit court's jurisdiction lacks merit.

Second, plaintiff argues that defendant failed to properly serve a summons and complaint on the prosecuting attorney or Friend of the Court in accordance with MCL 552.45. As an initial matter, the statute provides that, when a bill of complaint is filed and involves children under seventeen years old, a copy of the summons shall be served on the county's prosecuting attorney *or* upon the friend of the court in counties where the population exceeds 500,000. Therefore, where the Friend of the Court is provided with notice, there is no need to serve the prosecutor. *Young v Young*, 13 Mich App 395, 400; 164 NW2d 585 (1968). The record reflected that the circuit court notified the Friend of the Court of plaintiff's initial proceeding, and it was presumably notified of later proceedings because it prepared and submitted a preliminary

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[2] At various times, both parties attempted to "enroll" the Texas judgment in the circuit court. The statutory scheme in force at the time allowed parties to file foreign custody judgments with the circuit court, which would then register them and enforce them as it would any Michigan judgment. MCL 600.665; MCL 600.666.

recommendation. See *Eigner v Eigner*, 79 Mich App 189, 198-199; 261 NW2d 254 (1977). Because the Friend of the Court had notice of the pendency of the custody proceedings, we find no jurisdictional defect. *Id*.

Next, we find no merit to plaintiff's contention that the trial court lacked jurisdiction because defendant failed to file a required affidavit or otherwise assert under oath certain facts regarding the children. While MCL 600.659 mandated that each party in a custody proceeding must provide certain information to the trial court, the statute did not create a jurisdictional hurdle as plaintiff suggests. The statutory mandate was a requirement directed at the parties, not a limitation on the court. MCL 600.659. In this case, the information was provided in defendant's motion to enroll the Texas judgment, and the only information lacking was whether defendant affirmed her recitation of information under oath. Plaintiff failed to challenge the information or the formality of the oath in the trial court. Furthermore, plaintiff also failed to comply with the letter of MCL 600.659 when he initiated this action without providing the information under oath. Therefore, any error in this regard does not require reversal or affect the trial court's decision to take jurisdiction.

Plaintiff also argues that the Michigan court could not assume jurisdiction until the Texas court first issued an order declining jurisdiction. Plaintiff not only fails to support this argument, but it is contrary to MCL 600.653(1)(d), which permits Michigan to take jurisdiction if no other state has jurisdiction under the prerequisites of MCL 600.653(1)(a), (b), and (c). As previously discussed, Texas no longer had jurisdiction under those prerequisites because it was not the children's home state, the children no longer had ties with Texas, there was no information available in Texas with respect to their present or future care, and they were physically present in Michigan. Moreover, the record clearly reflects that the trial court judge discussed this case with the judge from Texas, and the Texas judge was "very eager to let [the Michigan judge] take jurisdiction." No authority required the Texas court to enter an order declining jurisdiction before the Michigan court could assume jurisdiction, so we will not find a lack of jurisdiction on these grounds.

Plaintiff next raises several issues with respect to the trial court's orders temporarily awarding defendant custody of the children pending the evidentiary hearing. The trial court changed temporary custody on March 28, 2003, based on the Friend of the Court recommendation, without holding a hearing or considering any admissible evidence. Defendant argues that this was clear legal error under *Mann v Mann*, 190 Mich App 526, 528-532; 476 NW2d 439 (1991). The custody arrangement is governed by the trial court's final order of April 2, 2004, which was entered after a full evidentiary hearing and after the trial court determined the existence of an established custodial environment, applied the proper burden of proof, and found that clear and convincing evidence existed to warrant the change of custody. Therefore, any error with respect to the temporary orders does not warrant reversal. *Id*. at 533.

Plaintiff next argues that the trial court abused its discretion when it awarded attorney fees to defendant. He argues that MCR 3.206(C) permits an award of attorney fees only where one party alleges facts sufficient to show that she could not bear the expense of the litigation. He then argues that, because defendant failed to make the requisite showing, the award of fees must be reversed. Plaintiff's argument is based on a misunderstanding of the law, and fails to comprehend the actual basis for the trial court's award of attorney fees. Attorney fees may be awarded in custody cases where frivolous pleadings or motions are filed. *Daniels v Daniels*, 165

Mich App 726, 733; 418 NW23d 924 (1988). The trial court awarded attorney fees based on plaintiff's filing of numerous, irrelevant papers with the trial court. It did not award fees under MCR 3.206(C). Plaintiff does not challenge the propriety of an award based on his filing of frivolous or irrelevant papers with the trial court. Therefore, he has not demonstrated that the award of attorney fees was an abuse of discretion. *Daniels*, *supra*.

Finally, plaintiff argues that the trial court abused its discretion when it ordered him to pay a portion of the expert witness fee charged by Dr. Robert Cohen. A trial court's award of expert witness fees is reviewed for an abuse of discretion. *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 466; 633 NW2d 418 (2001). Defendant initially agreed to pay the expert witness fee. However, at the evidentiary hearing, she requested that plaintiff be required to pay a portion of that fee. Dr. Cohen testified at the evidentiary hearing that plaintiff's conduct during the psychological evaluation process caused the evaluation to take longer than necessary. Dr. Cohen testified about the length of time he spent with plaintiff in person and on the telephone and the time he spent going through plaintiff's documentation, some of which was irrelevant. Given that plaintiff's conduct caused the expert witness fee to be increased, the trial court did not abuse its discretion by requiring plaintiff to pay a portion of that fee.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Peter D. O'Connell